

**ORDINANCE NO. 14-3088**

**AN ORDINANCE REPEALING CHAPTER 82 - OFFENSES AND MISCELLANEOUS PROVISIONS, ARTICLE III "SMOKING" OF THE CITY OF BEDFORD CODE OF ORDINANCES AND ALL OTHER ORDINANCES IN CONFLICT THEREWITH AND CREATING A NEW CHAPTER 82 - OFFENSES AND MISCELLANEOUS PROVISIONS, ARTICLE III, "SMOKING;" PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS, the City of Bedford is a home rule City acting under its home rule Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and,**

**WHEREAS, the dangers posed by tobacco are not limited to cigarettes, pipes or other traditional forms of smoking; and,**

**WHEREAS, new, unregulated high-tech smoking devices, commonly referred to as "electronic cigarettes" or "e-cigarettes" have recently become available to consumers; and,**

**WHEREAS, nicotine is a known neurotoxin that is one of the most highly addictive substances available for public consumption; and,**

**WHEREAS, e-cigarettes are entirely unregulated, there being no regulation by the federal government and no Texas statutes or regulations that in any way limit the production, distribution, or use of e-cigarettes; and,**

**WHEREAS, the City Council of Bedford, Texas has determined that it is the right of all citizens to be able to choose for themselves whether to smoke either actively or passively; and,**

**WHEREAS, the City Council of Bedford, Texas has determined that a ban on the sale of electronic cigarettes, e-cigarettes, liquid nicotine and like products in the City to persons under the age of eighteen (18) and a prohibition on self-service merchandising in the retail sale of electronic cigarettes, e-cigarettes, liquid nicotine and like products in order to minimize their physical accessibility to minors serves an important public interest in furtherance of the health, safety and general welfare of the citizens of the City; and,**

**WHEREAS, the City Council of Bedford, Texas has determined that the Texas Legislature currently prohibits the possession, purchase, consumption or receipt of cigarettes or tobacco products by minors, and the City enforces such regulations; and,**

**WHEREAS, the City Council of Bedford, Texas has determined that the Texas Legislature currently regulates vendor assisted sales and vending machines of cigarettes or tobacco products, including, but not limited to, prohibiting the use of the same by minors; and,**

**WHEREAS, the City Council of Bedford, Texas has determined that in order to promote the public health, safety and welfare of the City and its citizens, it is in the best interest of the City and its citizens to amend the Code of Ordinances as set forth below.**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEDFORD, TEXAS:**

**SECTION 1. That the findings above are found to be true and correct, and are incorporated herein.**

**SECTION 2. That Chapter 82 – Offenses and Miscellaneous Provisions, Article III, "Smoking" of the City's Code of Ordinances is hereby repealed.**

**SECTION 3.** That Chapter 82 – Offenses and Miscellaneous Provisions, Article III, “Smoking” of the City’s Code of Ordinances is created and shall read as follows:

**ARTICLE III. SMOKING**

**Sec. 82-71. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Administrative area* means the area of an establishment not generally accessible to the public, including but not limited to individual offices, stockrooms, employee lounges, or meeting rooms.

*Cigar* means, unless otherwise amended by the Tex. Tax Code, Chapter 155, a roll of fermented tobacco that is wrapped in tobacco and the main stream of smoke from which produces an alkaline reaction to litmus paper.

*Cigarette* means, unless otherwise amended by the Tex. Tax Code, Chapter 154, a roll for smoking: (A) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and (B) that is not a cigar.

*Conspicuous* means of a size and contrast that is clearly visible and legible to the general public and unobstructed from view.

*Electronic cigarette or e-cigarette* means any electronic or mechanical device usually composed of a mouthpiece, heating element or atomizer, battery, and electronic circuits that provides, or is manufactured to provide, a vapor and/or gas derived from liquid nicotine and/or other substances delivered or deliverable to the user to inhale in simulation of smoking. The term includes every version and type of such devices whether they are manufactured or marketed as electronic cigarettes, e-cigarettes, electronic cigars, e-cigars, electronic pipes, e-pipes, electronic vaping device, mechanical PV’s, electronic nicotine delivery system, or other similar device under any other product name or description.

*Food products establishment* means an operation that sells food for human consumption.

*Hospital* means any institution that provides medical, surgical, and overnight facilities for patients.

*Liquid nicotine* means any liquid product composed either in whole or in part of nicotine, propylene glycol and/or any other substance and manufactured for use with electronic cigarettes or e-cigarettes.

*Minor* means a person younger than eighteen (18) years of age.

*Open display unit* means, in the context of the retail sale of electronic cigarettes or e-cigarettes and/or liquid nicotine, any device, furniture, or furnishing within or upon which electronic cigarettes or e-cigarettes and/or liquid nicotine are displayed to customers, and includes, but is not limited to, any case, rack, shelf, counter, table, desk, kiosk, booth, stand, vending machine, and other surface.

*Possession* means to have on or about the person or otherwise exercise actual care, custody, management or control over a tangible object or substance.

**Public service area** means any enclosed area to which the general public routinely has access for municipal services or which is designated a public service area in a written policy of the agency in charge of such area.

**Retail and service establishment** means any establishment which sells goods or services to the general public.

**Self-service merchandising** means, in the context of the retail sale of electronic cigarettes or e-cigarettes and/or liquid nicotine, the open display, including, without limitation, the use of an open display unit of electronic cigarettes or e-cigarettes and/or liquid nicotine, whether packaged or otherwise, for direct retail customer access and handling prior to purchase without the intervention or assistance of the retailer or the retailer's owner, employee or agent.

**Smoke(s) or smoking** means and includes the carrying, possessing or holding of a pipe, cigarette, tobacco product, electronic cigarette or e-cigarette or liquid nicotine of any kind which is burning or emitting a vapor.

**Tobacco product** means: (A) cigar; (B) smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or as a cigarette; (C) chewing tobacco, including Cavendish, Twist, plug scrap and any kind of tobacco suitable for chewing; (D) snuff or other preparations of pulverized tobacco; or (E) an article or product that is made of tobacco or a tobacco substance and that is not a cigarette.

**Sec. 82-72. Prohibited in certain public areas.**

- (a) A person commits an offense if he or she smokes or uses a tobacco product, weed or other plant product, electronic cigarette, e-cigarette or liquid nicotine in any of the following indoor or enclosed areas:
  - (1) An elevator used by the public;
  - (2) A hospital or nursing home corridor providing direct access to patients' rooms;
  - (3) Any facility owned, operated or managed by the city unless the area is designated as a smoking area. The city manager or a designated agent may designate an area as a smoking area;
  - (4) Any retail or service establishment for serving the general public;
  - (5) An area marked with a no smoking sign in accordance with subsection (e) of this section by the owner or person in control of a hospital, nursing home, or retail or service establishment serving the general public; or
  - (6) An enclosed theater, movie house, library, museum or transit system vehicle.
- (b) A person commits an offense if he or she smokes or uses a tobacco product, weed or other plant product, electronic cigarette, e-cigarette or liquid nicotine within 100 feet of the main public entrance of the Bedford Public Library.
- (c) Except as specified in subsection (b), a person commits an offense if he or she smokes or uses a tobacco product, weed or other plant product, electronic cigarette, e-cigarette or liquid nicotine within 25 feet of a public entrance of any city facility.
- (d) The owner or person in control of an establishment or area designated in subsection (a) of this section shall post a conspicuous sign visible from the main public entrance to the nonsmoking area. The sign shall contain the words "No Smoking, City of Bedford Ordinance," the universal symbol for no smoking, or other language that clearly prohibits smoking.
- (e) The owner or person in control of an establishment or area described in subsection (a)(4) or (a)(6) may designate an area, including, but not limited to, lobbies, meeting rooms or waiting rooms, as a smoking area; provided that the designated smoking area may not include:
  - (1) The entire establishment;
  - (2) Cashier areas or over-the-counter sales areas; or
  - (3) The viewing area of any theater or movie house.

- (f) It is a defense to prosecution under this section if the person was smoking in a location that was:
  - (1) A designated smoking area of a facility or establishment described in subsection (a)(4) or (a)(6) of this section which is posted as a smoking area with appropriate signs;
  - (2) An administrative area or office of an establishment described in subsection (a)(4) or (a)(6) of this section;
  - (3) A retail or service establishment serving the general public with less than 1,000 square feet of public showroom or service space; or
  - (4) A retail or service establishment which is primarily engaged in the sale of tobacco products, electronic cigarettes or e-cigarettes, liquid nicotine or smoking implements.

**Sec. 82-73. Food products establishments.**

- (a) A food products establishment which has indoor or enclosed dining areas shall provide a separate indoor dining area for nonsmoking patrons.
- (b) A nonsmoking area must:
  - (1) Be separated, where feasible, from smoking areas by a minimum of four feet of continuous floor space;
  - (2) Be ventilated, where feasible, and situated so that air from the smoking area is not drawn into or across the nonsmoking area;
  - (3) Be clearly designated by appropriate signs visible to patrons within the dining area indicating that the area is designated nonsmoking; and
  - (4) Have ash trays or other suitable containers for extinguishing smoking materials at the perimeter of the nonsmoking area.
- (c) Each food products establishment which has a dining area shall have signs at the establishment's entrance indicating that nonsmoking seating is available.
- (d) Nondining areas of any food products establishment affected by the section to which patrons have general access, including, but not limited to, food order areas, food service areas, restrooms, and cashier areas, shall be designated nonsmoking areas.
- (e) It is a defense to prosecution under this section that the food products establishment is:
  - (1) An establishment which has indoor seating arrangements for less than 100 patrons and has public exterior entrances posted conspicuously thereto a sign which states "This Establishment Does Not Provide a No-Smoking Area;"
  - (2) An establishment which has more than 50 percent of its annual gross sales in alcoholic beverages; or
  - (3) A physically separated bar area of food products establishment otherwise regulated.

**Sec. 82-74. Smoking in food products establishments.**

A person commits an offense if he or she smokes or uses a tobacco product, weed or other plant product, electronic cigarette, e-cigarette or liquid nicotine in an area of a food products establishment designated as nonsmoking.

**Sec. 82-75. Possession of tobacco products by minors prohibited.**

- (a) *Prohibition of possession by a minor.* A minor commits an offense if the minor possesses a tobacco product.
  - (1) *Defense.* It is a defense to prosecution for the violation of subsection (a) that a minor possessed a tobacco product:
    - a. While in the course and scope of the minor's employment by a person or entity holding a permit issued by the state authorizing the person to engage in the business of being a distributor, wholesaler, bonded agent or retailer of tobacco products; or

- b. In the presence of an adult parent, guardian, or spouse, or other adult to whom the minor has been committed by the court.
  - c. That the individual younger than 18 years of age is participating in an inspection or test of compliance in accordance with Section 161.088, Health and Safety Code.
- (b) *Purchase of tobacco products by a minor—False information.* It is an offense for a minor, in order to acquire a tobacco product, to state to any person engaged in the business of selling tobacco products that such minor is not a minor, or to present to any such person a document or writing that purports to establish that such a minor is not a minor.
- (c) *Penalties.* A person who violates a provision of this chapter is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed \$500.00.

**Sec. 82-76. Possession, purchase, consumption, or receipt of Electronic Cigarettes or E-Cigarettes and/or Liquid Nicotine by minors prohibited.**

- (a) *Prohibition of possession by a minor.* A minor commits an offense if the minor possesses an electronic cigarette or e-cigarette or liquid nicotine.
  - (1) *Defense.* It is a defense to prosecution for the violation of subsection (a) that a minor possessed a electronic cigarette or e-cigarette or liquid nicotine:
    - a. While in the course and scope of the minor's employment by a person or entity where possession or receipt of the electronic cigarette, e-cigarette or liquid nicotine is required in the performance of the employee's duties as an employee; or
    - b. In the presence of an adult parent, guardian, or spouse, or other adult to whom the minor has been committed by the court.
    - c. That the individual younger than 18 years of age is participating in an inspection or test of compliance in accordance with Section 161.088, Health and Safety Code.
- (b) *Purchase of tobacco products by a minor—False information.* It is an offense for a minor, in order to acquire an electronic cigarette or e-cigarette or liquid nicotine, to state to any person engaged in the business of selling tobacco products that such minor is not a minor, or to present to any such person a document or writing that purports to establish that such a minor is not a minor.
- (c) *Penalties.* A person who violates a provision of this chapter is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed \$500.00.

**Sec. 82-77. Sale of electronic cigarette or e-cigarette or liquid nicotine to persons younger than 18 years of age prohibited; proof of age required.**

- (a) A person or retailer commits an offense if the person or retailer with criminal negligence:
  - (1) Sells, gives or causes to be sold or given an electronic cigarette or e-cigarette or liquid nicotine to someone who is younger than 18 years of age; or,
  - (2) Sells, gives or causes to be sold or given an electronic cigarette or e-cigarette or liquid nicotine to another person who intends to deliver it to someone who is younger than 18 years of age.
- (b) If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which electronic cigarettes, e-

cigarettes and/or liquid nicotine is/are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.

- (c) It is a defense to prosecution under subsection (a)(1) that the person to whom the electronic cigarette, e-cigarette or liquid nicotine was sold or given presented to the defendant apparently valid proof of identification.
- (d) A proof of identification satisfies the requirements of subsection (c) if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 18 years of age or older and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport or an identification card issued by a state or the federal government.

**Sec. 82-78. Vendor assisted sales required; self-service merchandising prohibited.**

- (a) Except as provided in subsection (b), a retailer or other person may not:
  - a. Offer electronic cigarettes, e-cigarettes, or liquid nicotine for sale in a manner that permits a customer direct access to the electronic cigarettes, e-cigarettes, or liquid nicotine;
  - b. Offer for sale or display for sale electronic cigarettes, e-cigarettes, or liquid nicotine by means of self-service merchandising; or,
  - c. Install or maintain an open display unit containing electronic cigarettes, e-cigarettes, or liquid nicotine.
- (b) It is a defense to prosecution under subsection (a) if:
  - a. A facility or business is not open to persons younger than 18 years of age at any time;
  - b. A facility or business is a premises for which a person holds a package store permit issued under the Alcoholic Beverage Code; or,
  - c. An open display unit is located in an area that is inaccessible to customers.

**Secs. 82-79-82-100. Reserved**

**SECTION 4.** That a person who violates a provision of this chapter is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed \$500.00.

**SECTION 5.** That this ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Bedford, Texas, and this ordinance shall not operate to repeal or affect any other ordinance except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby required.

**SECTION 6.** That if any section, subsection, sentence, clause or phrase of this ordinance is for any reasons held unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

**SECTION 7.** That this ordinance shall become effective from and after its passage.

**PRESENTED AND PASSED** on this 8th day of April 2014, by a vote of 7 ayes, 0 nays and 0 abstentions, at a regular meeting of the City Council of the City of Bedford, Texas.

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**Jim Griffin, Mayor**

**ATTEST:**

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**Michael Wells, City Secretary**

**APPROVED AS TO FORM:**

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**Stan Lowry, City Attorney**